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OFFICE OF PETITIONS

In re Application of :
Eby, Smith, Serrault, Vetting, and : DECISION REFUSING STATUS
Gaska : UNDER 37 CFR 1.47(a)
Application No. 10/626,080 :
Filed: 24 July, 2003 :
Atty Docket No. 29618/38939 :
:

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 23 August, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 24 July, 2003, without an executed oath or declaration. Accordingly, on 20 April, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set. In response, on 6 May, 2004, petitioners filed the late-filing surcharge, and a declaration naming David C. Eby, Aaron W. Smith, Jayson J. Serrault, Tobin Vetting, and Gilius A. Gaska as joint inventors, signed by all joint inventors except Serrault on behalf of themselves and joint inventor Serrault. The petition was dismissed on 6 August, 2004.

On 23 August, 2004, the present renewed petition was filed, accompanied by a declaration signed by joint inventor Serrault.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
- (5) a statement of the last known address of the non-signing inventor.

The petition lacks item (2).

In regards to item (2), the declaration contains is defective in that it contains non initialed and/or non-dated alterations.¹ Specifically, there is an uninitialialed and/or undated alteration in the signature block for joint inventor Eby. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by the inventor to whom the error or deficiency relates is required.²

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

¹See 37 CFR 1.52(c).

²37 CFR 1.67(a)(2).

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision should be directed
to the undersigned at 703-308-6918.



Douglas I. Wood
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Office of Petitions